

REMARKS

Applicants respectfully request entry of the Amendment and reconsideration of the claims. Claims 1-2, 4-5, 8-10, 13, 15-16, 18-19, 36-38, 40, 43, and 46-50 have been amended. Please withdraw claims 12, 21-23, 39, 53-57 and 61. Claims 1-2, 4-11, 13-19, 24-25, 32-38, 40-52, and 58-60 are currently pending. Applicants respectfully request reconsideration and withdrawal of the pending rejections under 35 U.S.C. § 112, first and second paragraph.

Comments Regarding Claim Amendments

Claims 1-2, 4-5, 8-10, 13, 15-16, 18-19, 36-38, 40, 43, and 46-50. Claims 1-2, 4-5, 8-10, 13, 15-16, 18-19, 36-38, 40, 43, and 46-50 were amended to clearly and consistently reflect the methods described in the specification.

Claim 38. Claim 38 was amended to correct an obvious typographical error, "capsase" to the correct "caspase."

Comments Regarding Double Patenting Rejection

The Examiner rejects claims 21-23 as being substantial duplicates of claim 19. Although Applicants do not agree with these rejections, claims 21-23 have been withdrawn to further prosecution of the instant application. Applicants respectfully request removal of the double patenting rejection.

Comments Regarding Rejections under 35 U.S.C. §112, first paragraph

The Examiner rejects claims 1-2, 4-19, 21-25, 32-52, and 58-60 under 35 U.S.C. §112, first paragraph. The Examiner asserts that the claim embodiment of the mitochondrial DNA be from a species other than that of the nuclear material is considered new matter. Although Applicants do not agree with these rejections, claim 1 has been amended, and the amended claim does not recite the claim embodiment that the Examiner rejects.

Additionally, the Examiner rejects 1-2, 4-19, 21-25, 32-52, and 58-60 under 35 U.S.C. §112, first paragraph, as non-enabling in establishing that the cells of the instant methods are embryonic stem cells. The claims have been amended to recite "embryonic or stem-like cells". The embryonic or stem-like cells of the instant claims are defined within the specification at page 13, line 24 to page 14, line 6. Accordingly, Applicants respectfully request removal of the rejection under 35 U.S.C. §112, first paragraph.

In view of the foregoing, Applicants respectfully request removal of the rejection under 35 U.S.C. §112, first paragraph.

Comments Regarding Rejections under 35 U.S.C. §102 and §103

The Examiner rejects claims 53, 54, and 57 under 35 U.S.C. §102(b), claims 53-57 and 61 under 35 U.S.C. §102(e), and claims 53-57 and 61 under 35 U.S.C. §103(a). Although Applicants do not agree with these rejections, claims 53-57 and 61 have been withdrawn to further prosecution of the instant application. Applicants respectfully request removal of the rejections under 35 U.S.C. §102 and §103.

CONCLUSION

In view of the foregoing, the Applicants believe that all claims as currently pending are in condition for allowance and such action is respectfully requested. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Respectfully submitted,

MERCHANT & GOULD, PC

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